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CASE 4-31830C/C1/SKB1364

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January 26, 2004
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF
MALCOLM RICHARD BOYD
APPLICATION NO: 09/884,715
FILED: JUNE 19, 2001
FOR: NUCLEOSIDE ANALOGS IN COMBINATION THERAPY OF
HERPES SIMPLEX INFECTIONS

Art Unit: 1648
Examiner: Mosher, M.

MS PETITION
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

PETITION UNDER 37 CFR 1.78(a)(3) TO OBTAIN AN UNINTENTIONALLY
DELAYED CLAIM OF PRIORITY UNDER 35 U.S.C. §120 and/or §365(c)

Sir:

Applicants hereby respectfully file this petition pursuant to 37 CFR 1.78(a)(3) in order to obtain the benefit of the filing date of PCT/GB97/00226 under 35 U.S.C. §120 and/or §365(c).

As is clear from the enclosed copy of the Declaration which accompanied the transmittal papers at the time the instant application was filed Applicants intended to claim the benefit of International Application No. PCT/GB97/00226, filed January 24, 1997, as well as GB 9601544.1 filed January 26, 1996, and U.S. Application No. 09/117,154, filed July 28, 1998. Unfortunately, however, only U.S. Application No. 09/117,154 was explicitly reflected in the cross-reference that was introduced by the Preliminary Amendment which accompanied the transmittal papers at the time the instant application was filed. Accordingly, in the Amendment which is being concurrently filed, a copy of which is enclosed, the "original" cross-reference has been replaced by a "new" cross-reference which explicitly reflects the fact that Applicants claim priority from International Application No. PCT/GB97/00226, filed January 24, 1997, and U.S. Application No. 09/117,154, filed July 28, 1998.

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Please charge the \$1330 surcharge fee required by 37 CFR 1.17(t) and any additional fees that may be required to Deposit Account No. 19-0134 in the name of Novartis. An additional copy of this Petition is enclosed.

In accordance with 37 CFR 1.78(a)(3)(iii), it is respectfully submitted that the entire delay between the date the claim was due under paragraph (a)(2)(ii), viz., October 19, 2001, and the date that the claim was filed, viz., the date of the enclosed Amendment, i.e., January 26, 2004, was unintentional.

In view of the foregoing, Applicants respectfully request that the instant Petition be granted.

Respectfully submitted,

Novartis
Corporate Intellectual Property
One Health Plaza, Building 430
East Hanover, NJ 07936-1080


Thomas R. Savitsky
Attorney for Applicant
Reg. No. 31,661
(862) 778-7909

Date: January 26, 2004

Encls.: Copy of Declaration
Copy of Amendment
Additional copy of this Petition
Postcard



Docket No.: P31364

PCT/GB97/00226

DECLARATION AND POWER OF ATTORNEY

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

NUCLEOSIDE ANALOGS IN COMBINATION THERAPY OF HERPES SIMPLEX INFECTIONS

the specification of which (check one)

☐ is attached hereto.

☒ was filed on 24 January 1997 as Serial No. PCT/GB97/00226
and was amended on (if applicable).

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the patentability as defined in Title 37, Code of Federal Regulations, Section 1.56.

I hereby claim foreign priority benefits under Title 35, United States Code, Section 119(a)-(d) or Section 365(b) of any foreign application(s) for patent or inventor's certificate, or Section 365(a) of any PCT International application which designated at least one country other than the United States, listed below and have also identified below any foreign application for patent or Inventor's certificate, or PCT International application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application(s) Number	Country	Filing Date	Priority Claimed
9601544.1	GREAT BRITAIN	26 January 1996	Yes

I hereby claim the benefit under Title 35, United States Code, Section 119(e) of any United States provisional application(s) listed below.

Application Number	Filing Date
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I hereby claim the benefit under Title 35, United States Code, Section 120 of any United States application(s) or Section 365(c) of any PCT International application designating the United States, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT International application in the manner provided by the first paragraph of Title 35, United States Code, Section 112, I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, Section 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application.

Serial No.	Filing Date	Status
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I hereby appoint the practitioners associated with the Customer Number provided below to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith, and direct that all correspondence be addressed to that Customer Number:

Customer Number 20462.

Address all correspondence and telephone calls to Mary McCarthy, SmithKline Beecham Corporation, Corporate Intellectual Property-U.S., UW2220, P.O. Box 1539, King of Prussia, Pennsylvania 19406-0939, whose telephone number is 610-270-5022.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full Name of Inventor: Malcolm Richard BOYD

Inventor's Signature: Malcolm R. Boyd Date: 23rd June 1998

Residence: EPSOM SURREY GREAT BRITAIN

Citizenship: BRITISH

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